REMARKS

Claims 18 and 33 have been amended. Claims 18-21, 23, 25, 28, 29, 31-36, 39-41 are pending.

Response to Office Action dated 02/08/2007

Applicant previously attempted to remove the Katz US 2004/0115139 reference (filed 10/15/2003) by arguing the Applicant's filing date (07/29/2003) preceded the Katz reference. Although Katz claims priority to an earlier filed provisional application (60/418,789 filed 10/15/2002), the provisional application does not disclose the claimed feature, i.e. obtaining a three dimensional bite registration in a neutral centric position via transcutaneous electrical nerve stimulation (TENS).

In response to Applicant's argument, the Examiner took the position that the provisional application broadly discloses subject matter underlining TENS and that the use of neurotoxin renders TEN[S] obvious. See Page 2 of 02/08/2007 Office Action. The Examiner referred to the following statement in the Katz provisional application: "this invention provides the sue [use] of a neurotoxin to cause limited paralysis of the muscles of mastication in a patient" at page 6, lines 1-5.

To summarize, the Examiner appears to take the position that since the Katz provisional application discloses the use of a neurotoxin, this disclosure renders TENS obvious.

The Examiner's interpretation of Katz is incorrect. The specific passage using TENS in the Katz reference is found at paragraph 146:

[0146] The optimal neuromuscular position can be measured using surface electromyography (sEMG) or by use of mandibular tracking instrumentation, as a means to visually verify positional changes from a habitual accommodative rest position to a physiologic rest position usually after muscle stimulation via TENS (transcutaneous electro-neuro stimulation).

Rather than TENS being an obvious alternative or equivalent to a neurotoxin as the Examiner has suggested, the use of TENS in the Katz reference is for determining a physiologic rest position. No where in the Katz reference is TENS disclosed as an alternative or equivalent to use of a neurotoxin nor is TENS taught for creating a three dimensional bite registration.

Since TENS is not disclosed in the Katz provisional application, and its suggested use by the Examiner as an obvious alternative is an incorrect interpretation of the reference, Applicant respectfully requests the Examiner to withdraw his objection to claims 32, 36 and 40 based on this reference.

Claims 18, 19, 33, 35, and 39-41

The Examiner rejected Claims 18, 19, 33, 35, and 39-41 as being unpatentable over Goldstein US 6,012,455 in view of Manczur US 2,776,486.

As to claim 18, Applicant has amended this claim to include the limitation in subpart d of: "for slidable movement along said slide", and in subpart e adding the term "slidably".

The Goldstein reference does not disclose a tubing retention platform which is slidably mounted to an anterior, extra oral slide. The slide 132 the Examiner refers to in Goldstein (page 3 of 02/08/2007 Office Action) is as a dentally stabilized platform (Goldstein '455 Col. 5, line

64) and the tubing retention platform 136 is a pair of clamp jaws (Goldstein '455 Col. 5, lines 66-67).

Goldstein '455 does not disclose any feature which is mounted for slidable movement along the length of the anterior, extraoral slide which is affixed to a dual arch oral appliance. The stabilized platform of Goldstein '455, represented in various figures by part numbers 30, 44, 56, 74, 94, 112, 132, 150, 168 and 188 is fixed in position and there is no teaching or suggestion that its position, relative to the mouthpiece or dental anchor can be altered.

Applicant believes that the amended claim 18 herein submitted avoids the Goldstein '455 reference. Claim 18 and dependent claims 19-21, 23, 25, 28-29, 31, 32, and 39 should be in a condition for allowance.

With respect to the Examiner's comments related to claim 19 (page 4, 02/08/2007 Office Action), wherein the Examiner considers the selection of the positional range of 5mm to 30mm to be a mere obvious matter of design choice, Applicant contends there is a functional reason for this particular range.

Referring to the Applicant's specification at page 9 lines 20-25, Applicant discusses that if the tubing retention platform is at least 35mm from the labial surface of the maxillary anterior teeth, it is a design flaw that forces the clinician to angulate the nasal tubing in an undesirable manner which often results in failure to properly seal the nares and maintain the seal while the patient is asleep. This explanation supports the preferred range being between 5mm to 30 mm from the labial surface of the maxillary anterior teeth described in the specification at lines 5-6 of page 14.

With respect to the Examiner's comments related to claim 33 (page 4, 02/08/2007 Office Action), Applicant has amended claim 33 to include the limitation "but not integrally". The retention platform of the pending application is slidably mounted upon a slide which is integral with the oral appliance. The retention platform can be slid upon the slide until it is in an optimum position between 5mm to 30 mm from the labial surface of the maxillary anterior teeth as described earlier herein. It is therefore a crucial element of Applicant's invention that the retention platform not be integral to the oral appliance because it is necessary to adjust the position of the platform relative to the oral appliance so that the optimum positioning of the platform relative to a patient's nares can be achieved.

Applicant's added limitation that the retention platform is operably "but not integrally" connected to the oral appliance avoids Goldstein '455. Claim 33 and dependent claims 34, 35 and 36 should be in a condition for allowance.

With respect to claim 40, in view of the fact that the Katz reference has been avoided, as discussed earlier, Applicant believes claim 40 should be allowable in its present condition.

CONCLUSION

For the reasons set forth above, Applicant believes the pending claims are in a condition for allowance.

Respectfully submitted,

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/rdc/

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